

10 JUL 1989

District Counsel, Kansas City NW:RCY
Attn: Robert M. Fowler

Acting Chief, Tax Shelter Branch

Post Review - [REDACTED]

We have reviewed your memorandum dated May 17, 1989, to the District Director, Missouri District, regarding whether the above-mentioned partnership qualifies for the small partnership exception to the unified examination and litigation procedures of I.R.C. §§ 6221 through 6233.

The question presented in the memorandum was whether there is a de minimis rule to be applied to the "bright line test" articulated in Harrell v. Commissioner, 91 T.C. 242 (1988), relating to the small partnership exception. I.R.C. § 6231(a)(1)(B) excepts "small partnerships" from the examination and litigation procedures of sections 6221 through 6233. A small partnership is defined as a partnership with ten or fewer partners, each of whom is a natural person (other than a non-resident alien) or an estate, and each of whom's share of each partnership item is the same as his share of each other partnership item. In the above-mentioned partnership the same share requirement was violated because there was a minor variation in the distribution of partnership items. The Schedule K-1's indicate that the partners shared equally in all partnership items except there was one item which was allocated 50.9% - 49.1%. We concur with your conclusion that there is no de minimis rule to be applied to the bright line test because there is no authority for such a rule in the statute or the regulations.

If you have any additional questions regarding this matter, please contact Vada Waters at (FTS) 566-3289.

CURTIS G. WILSON

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